

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of	)	
Paxson Des Moines License, Inc.	)	MM Docket No. 03-15
KFPX(TV), Newton, IA	)	
	)	File No. BFRECT-20050210AUC
Negotiated Channel Arrangement for	)	
First Round Digital Channel Election	)	
	)	
To: The Secretary		
Attn: Chief, Media Bureau		

**REPLY COMMENTS**

Paxson Des Moines License, Inc. ("Paxson"), licensee of television station KFPX(TV), Newton, Iowa (the "Station"), hereby responds to the comments and objections of Capital Communications Company, Inc. ("Capital"), the objection of Pappas Telecasting of Iowa, L.L.C. ("Pappas"), and the comments of Caroline K. Powley ("Powley"), Des Moines Hearst-Argyle Television, Inc. ("Hearst-Argyle"), and Iowa Public Broadcasting Board ("IPT") (and collectively, the "Commenters") regarding the above-referenced channel election application. The Station was allotted Channel 39 but is considered a "singleton" as it holds no paired allotment. The Station thus is at a comparative disadvantage to many other broadcast television stations who, as a part of the Commission's channel election process, could choose between one of two assigned allotments for post-transition operation.

Paxson is concerned about the Station's ability post-transition to replicate digital service on its allotted channel and accordingly examined whether an

alternative channel might provide improved digital coverage. Paxson concluded that Channel 29 not only would preserve existing service, but the channel offered the potential in the future for expanded service to those who do not currently receive it.

The Commission's channel election process permitted stations to elect a channel unassigned to them by entering into a negotiated channel arrangement (NCA). Channel 29, however, was not assigned to any station in the market -- not that stations were restricted under NCAs from electing such channels -- so there was no explicit party with whom to negotiate. Paxson accordingly contacted a number of other stations in the market (prior to the Commission's creation of a formalized objection period)<sup>1</sup> to see if they objected to the Station's election of Channel 29. New York Times Management Services, licensee of WHO-TV, Des Moines, Iowa, had returned a signed acknowledgement to Paxson indicating that it had no objection to the Station's election of Channel 29. Paxson also received a response from Second Generation of Iowa, LTD, licensee of KFXA(TV), Cedar Rapids, Iowa, expressing concerns about interference. Paxson responded that no interference would be caused.<sup>2</sup> Paxson identified the stations it contacted on Schedule A of the Form 382.

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<sup>1</sup> The Commission did not establish a formalized objection period until a few days before elections were due. *Public Notice*, "DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC form 381 Certifications, and Notification to FCC of Flash Cut Decisions, DA 05-273 (Feb. 1, 2005).

<sup>2</sup> Second Generation did not file any comments or objections to the Station's election in this proceeding.

All Commenters except Powley, permittee of television station KDMI-DT, Des Moines, Iowa, are licensees of stations that were listed by Paxson on Schedule A. Commenters all filed comments in which they denied having entered into an NCA with Paxson. Paxson apologizes for obviously compelling Commenters to file such comments. Paxson should have been more clear, as some other stations were in preparing their election forms, that the identified parties on Schedule A were listed because they had not objected to the Station's election of Channel 29.

Paxson hopes and certainly believes that Commenters have not been prejudiced in any way by their inclusion on Schedule A. Paxson notes that IPT's comments verify that it does not object to the Station's election of Channel 29, as IPT's inclusion on Schedule A was meant to convey. Similarly, Hearst-Argyle, although asserting that it is not a party to an NCA, does not raise any objection to the Station's election of Channel 29.

Capital, licensee of television station WOI-TV, Des Moines, Iowa, elected its analog Channel 5 in the first round of channel elections. Capital objects to the Station's election of Channel 29 on the grounds that the Station's election could adversely impact the channels available to Capital during the third round of channel elections. Capital was not prohibited from seeking to elect a different channel than it did for WOI-TV in the first round of channel elections, as Paxson has done. Having made an election decision, Capital surely understands that it will be unable to revisit its election until the third round, at which time practically all stations -- and not just KFPX(TV) -- will have "locked in" their elections. WOI-

TV's choice not to do so should not affect the Station's election. Moreover, if the Commission approves the Station's election, Paxson will surrender its currently assigned channel for subsequent election in future rounds by any other station, including WOI-TV.

Pappas, licensee of television station KPWB-TV, Ames, Iowa objects to the Station's election on the grounds that it never received Paxson's letter requesting that it inform Paxson of any objections it had to the Station's election of Channel 29. In fact, Paxson's records indicate that Paxson's letter was received and signed for by KPWB-TV on January 14, 2005. As such, it is clear that Paxson did in fact make a "serious, good faith effort" to alert Pappas to its intention to elect Channel 29 and to see if KPWB-TV objected. Pappas has not raised any technical objection to the Station's election of Channel 29, nor has it alleged that KPWB-TV will in any way be adversely impacted by the Station's election. Paxson also notes that in-core "singleton" stations such as KPWB-TV were free to seek to elect an unassigned channel. KPWB-TV's decision not to do so should have no impact on the Station's election of Channel 29.

Powley, permittee of television station KDMI-DT, Des Moines, Iowa, objects to the Station's election on the grounds that as a singleton on out-of-core channel 56, KDMI-DT was unable to participate in the first round of channel elections and therefore is "vitally interested" in the channels that will be available in the second round. Powley also alleges that Paxson, in electing Channel 29 in the first round, is circumventing the rulemaking process.

Paxson has several responses. First, the Commission specifically has allowed stations with no in-core allotment to enter into negotiated channel arrangements in the first round of channel elections.<sup>3</sup> KDMI-DT accordingly was free to enter into an arrangement to elect a channel in the first round, but chose not to do so. Second, if the election is approved, Paxson will surrender the Station's currently assigned channel for election purposes. As such, Powley should be indifferent as to whether the Station's election is approved or not. Third, as the Commission made clear in the Second DTV Periodic Review, the elections are part of a process culminating in a rule making. The Commission plainly announced that it will issue a Notice of Proposed Rule Making in 2006 to propose a new DTV Table of Allotments for "creating the new DTV allotments proposals."<sup>4</sup> The Commission did not restrict its election process to existing allotments, nor could it have. Moreover, if it had, the Commission would have to begin the election process anew to accommodate the many stations which deferred to the second round in reliance thereof.

Other than as described above, Paxson received no objections to the Station's election of Channel 29. As Paxson has shown, none of the objections raised in this proceeding present issues that should prevent the assignment of

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<sup>3</sup> See *Public Notice*, "First Round DTV Channel Election Issues – List of In-Core Channels Elected by Out-of-Core Stations Participating in Proposed Negotiated Channel Arrangements; List of Stations That Submitted Schedule B Reflecting Reduced Operating Facilities in Connection with Proposed Negotiated Channel Arrangements," DA 05-655, at Table I (March 11, 2005).

<sup>4</sup> Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order, MB Docket No. 03-15, FCC 04-192, ¶¶ 65-67 (rel. Sept. 7, 2004).

Channel 29 to the Station for post-transition operation. Paxson does not believe that the election has any anti-competitive effects or that it has any adverse impact on any other station. Therefore, Paxson respectfully requests that the Commission assign Channel 29 to the Station for post-transition operation.

Respectfully Submitted,

PAXSON DES MOINES LICENSE, INC.

By: 

William L. Watson  
Secretary

Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Dated: March 22, 2005

Certificate of Service

I, Cynthia O'Jest, certify that on this 22nd day of March, 2005 I caused the foregoing Reply Comments to be served by overnight courier on the following:

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